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16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

18  
19 United States of America,

20 Plaintiff,

21 vs.

22 Twitter, Inc.,

23 Defendant.  
24

Case No. 3:22-cv-03070-TSH

**X CORP.'S ADMINISTRATIVE  
MOTION TO FILE UNDER SEAL  
CERTAIN DOCUMENTS IN SUPPORT  
OF X CORP.'S REPLY IN SUPPORT OF  
MOTION FOR PROTECTIVE ORDER  
& RELIEF FROM CONSENT ORDER**

The Hon. Thomas S. Hixson

1 Pursuant to Civil Local Rules 7-11 and 79-5, X Corp., successor in interest to Defendant  
2 Twitter, Inc., respectfully moves the Court to seal exhibits to the Declaration of Daniel R. Koffmann  
3 in Support of X Corp.'s Reply in Support of Motion for Protective Order & Relief from Consent  
4 Order (the "Supplemental Koffmann Declaration"). Specifically, X Corp. requests that portions of  
5 the following document described in the accompanying Proposed Order (the "Confidential  
6 Material") remain sealed:

- 7 • Ex. 21: FTI Consulting's cybersecurity assessment of X Corp. for the period of  
8 May 26, 2022, through May 25, 2023.

9 X Corp. seeks to keep the Confidential Material under seal because it contains non-public  
10 information that is sealable under federal law.

11 In determining whether to permit documents to be filed under seal, courts in the Ninth Circuit  
12 apply two separate standards: (1) the "compelling reason" test for sealing information in connection  
13 with motions for a determination on the merits of a claim or defense; and (2) the less-restrictive  
14 "good cause" test for sealing information in connection with non-dispositive filings. *Kamakana v.*  
15 *City and Cnty. of Honolulu*, 447 F.3d 1172, 1178–80 (9th Cir. 2006); *Ctr. for Auto Safety v. Chrysler*  
16 *Grp.*, 809 F.3d 1092 (9th Cir. 2016). The distinction between "dispositive" and "nondispositive"  
17 motions is not a "mechanical classification[]," but focuses on whether the "motion at issue is more  
18 than tangentially related to the underlying cause of action." *Ctr. For Auto Safety*, 809 F.3d at 1098–  
19 99. Confidential business information, trade secrets, and other information that if published may  
20 harm a party or third party's competitive standing meet both standards. *See id.* at 1097; *see also*  
21 *Jam Cellars v. Wine Grp.*, No. 19-cv-01878-HSG, 2020 WL 5576346, at \*2 (N.D. Cal. Sept. 17,  
22 2020); *Fed. Trade Comm'n v. Qualcomm*, No. 17-cv-00220-LHK, 2019 WL 95922, at \*3 (N.D. Cal.  
23 Jan. 3, 2019); *In re Elec. Arts.*, 298 F. App'x 568, 569 (9th Cir. 2008).

24 Regardless of which applies, the Confidential Material clearly meets both the good cause  
25 and compelling reasons standards, and legitimate public and private interests warrant sealing. The  
26 Confidential Information consists of a detailed evaluation of X Corp.'s cybersecurity protocols and  
27 risk assessments thereof. Revealing the structure and makeup of X Corp.'s privacy and information  
28 security apparatus could assist potential hackers, cybercriminals, and other bad actors to devise

1 schemes to penetrate X Corp.’s systems and cause harm to the platform. Monteiro Decl. ¶ 3. As  
2 such, the public interest weighs heavily in favor of sealing because public disclosure of X Corp.’s  
3 internal cybersecurity protocols poses a substantial security risk. *See In re Anthem, Inc. Data*  
4 *Breach Litig.*, No. 15-MD-02617-LHK, 2018 WL 3092256, at \*2 (N.D. Cal. Mar. 16, 2018) (risk  
5 of cyberattack is a compelling reason to seal descriptions of cybersecurity practices and protocols  
6 from class action settlement).

7         Sealing the Confidential Material will protect X Corp.’s legitimate private interest in  
8 maintaining the confidentiality of its business information and guarding its competitive standing.  
9 These materials disclose the details of X Corp. security policies, structures and regulatory risk  
10 assessments, all of which are “sources of business information that might harm [X Corp.’s]  
11 competitive standing” if publicly disclosed. *Eco Elec. Sys. v. Reliaguard*, No. C 20-00444 WHA,  
12 2022 WL 2239833, at \*1 (N.D. Cal. June 22, 2022) (quoting *Nixon v. Warner Commc’ns.*, 435 U.S.  
13 589, 598 (1978)); Monteiro Decl. ¶ 3. Public disclosure of the Confidential Material could cause X  
14 Corp. competitive injury by permitting competitors access to confidential information about X  
15 Corp.’s services, processes, and internal operations, while X Corp. lacks equivalent access to  
16 confidential information about those competitors. *See Skillz Platform v. Avia Games*, No. 21-cv-  
17 02436-BLF, 2023 WL 5767465, at \*2 (N.D. Cal. Sept. 6, 2023) (granting a motion to seal documents  
18 “containing confidential business information the release of which would cause competitive harm”);  
19 *see also Kamakana*, 447 F.3d at 1179 (“‘compelling reasons’ sufficient to . . . justify sealing court  
20 records exist when such ‘court files might have become a vehicle for improper purposes,’ such as  
21 the use of records to . . . release trade secrets”).

22         Finally, X Corp.’s request is narrowly tailored to only the sealable portions of the  
23 Confidential Material. A less restrictive alternative to sealing is not sufficient because the threat of  
24 harm from public disclosure cannot be mitigated by any less restrictive means.

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1 For the foregoing reasons, X Corp. respectfully requests that the Court seal the highlighted  
2 portions of Exhibit 21 to the Supplemental Koffmann Declaration.

3 DATED: October 11, 2023

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5 By /s/ Alex Spiro

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